

AGREEMENT

THIS AGREEMENT, made on this _____ day of May, 2009, by and between Washington County, in behalf of the Washington County Habitat Conservation Plan (hereinafter “HCP”), and Colorado Plateau Associates (hereinafter “Contractor”).

The parties stipulate and recite as follows:

A. **History:**

To mitigate habitat disturbance and impacts from a utility project, eight (8) polygons, each approximately three acres in size that were established in December 2007. Each polygon was reseeded using native seed and incorporated into the soil through a combination of hand-raking and the use of an ATV dragging a harrow or chain-link fence. The eight polygons are located in the Red Cliffs Desert Reserve (RCDR) and are shown on the attached diagram (Exhibit A-1).

B. **Services needed:**

The HCP is in need of services to conduct a three-year monitoring program of the established research polygons to identify effective management actions to control brome grasses and reestablish native plant communities within the Red Cliffs Desert Reserve.

C. **General goals:**

1. Determine the success of the reseeding efforts;
2. Identify effective management actions to restore and/or reestablish desert tortoise habitat; and
3. Gain information about control of undesirable invasive non-native vegetation and evaluate the effectiveness of restoration efforts within polygons less than five acres in size.

D. **Methods:** The success of the reseeding efforts will be determined by establishing plots in the following manner:

1. 16 plots in the reseeded polygons – two per polygon;
2. Eight plots in burned areas adjacent to reseeded polygons - one plot per polygon; and

3. Four controls in unburned areas. The intent is to be able to compare areas raked with areas dragged or uncovered, and to compare reseeded areas with untreated areas and undisturbed areas.

Frequency, cover and density of perennials and cover of annuals would be determined through establishment of vegetation transects in each of the plots along with color photographs containing a location identifier for each transect.

Additional information that would be required includes, soil type and ecological site.

The monitoring work shall be completed at the same time each year, between May 1 and June 15.

E. **Objectives:** This process will accomplish multiple objectives:

1. Gain information of the effectiveness of the methods employed to reclaim disturbed areas within the RCDR, which may be applied to burned areas in the Reserve;
2. Gain information about the level of successful establishment of species seeded in mix and their applicability to the burned areas of the RCDR;
3. Gain information about the ability of the rehabilitation methods to control or compete with undesirable invasive non-native vegetation; and
4. Gain information on the ability of rehabilitation efforts to increase the potential for tortoises to access and utilize restored habitat.

F. **Requirements:**

For the reasons recited above and in consideration of the mutual covenants contained herein, the parties agree as follows:

Contractor shall establish and document 28 monitoring plots within the specified areas by June 15, 2009 as follows:

1. 16 plots containing at least 100 one-meter-square (1m²) quadrats in each plot. This is understood to mean two (2) plots for each of eight (8) rehabilitation polygons.
2. Eight (8) plots in burned areas adjacent to the eight (8) polygons, or one (1) plot adjacent to each polygon, containing the same 100 one-meter-square (1m²) quadrats.

3. Four (4) control plots established in identified unburned areas mutually agreed upon by Contractor and HCP.
4. Transects within the plots shall be a randomized block design with layout such that no overlap occurs.
5. Each end of the baseline of transect blocks shall be permanently marked with stakes or posts, with GPS coordinates being taken of same as backup for replication in future readings. Any adjustment in layout will be documented for each plot for replication purposes.
6. Sampling:
 - a. Density of all perennials shall be recorded for each quadrat and tabulated for each plot.
 - b. Canopy cover for all species shall be recorded for each quadrat and tabulated for each plot.
 - c. Frequency of all species shall be derived from above values and tabulated for each plot.
 - d. Other data, such as height or production of specific species (such as red brome or cheat grass) shall be recorded as well.
7. Photographs:
 - a. Digital photography shall be used to identify and show aspect of each plot.
 - b. A visible identifier shall be included in all photography.
 - c. Opposing photographs shall be taken from each end of each baseline the first year – with diagonal photos across each plot from the baseline marker each year.
8. Site characterization:
 - a. Characterizations for each plot shall be developed based on ecological site guides.
 - b. Soil characterizations shall be developed for each plot based on existing soil survey data.
9. Data summary:

All plot data shall be summarized into tabular form each year and submitted to the HCP annually by July 31, 2009, 2010 and 2011.

These annual reports shall include GPS coordinates, photographs, schematic of each plot showing transect lines and baseline location. The report shall include write-ups of site and soil characterization, any observations on field conditions, vegetation not picked up in the transects, but occurring in the polygon, and other information deemed of value.

In addition to the annual reports, a final report shall be submitted following completion of the third year of monitoring in 2011. This report shall summarize the information gathered over the three-year contract in the annual reports.

All data shall be submitted in electronic and printed form.

G. Compensation:

1. Contractor shall provide polygon monitoring services for three years as described above and specifically defined in Contractor's proposal dated April 13, 2009.
2. Contractor shall be compensated as follows:
 - a. Year 1: \$6,400.00.
 - b. Year 2: \$5,200.00.
 - c. Year 3: \$5,200.00.

H. Termination: The parties agree that this Agreement may be terminated for cause upon providing seven (7) calendar days written notice, and may be terminated without cause by giving fourteen (14) days notice to the other party. The parties agree that failure to comply with any term of this Agreement constitutes "cause" and is grounds to terminate the Agreement. In the event that the Agreement is terminated, Contractor shall only be compensated for the reasonable value of the services provided pursuant to this Agreement to the time the Agreement was terminated.

I. Contractor is an Independent Contractor. The parties agree that Contractor is an independent contractor and that Contractor shall not be deemed an agent, employee or

servant of the County. This Agreement is for services and Contractor is not an employee of the County and is not entitled to the benefits provided by the County to its employees. Contractor solely controls the method and manner of delivering the services required by this Agreement.

- J. Utah Law to Govern.** This Agreement has been drawn and executed in the State of Utah. All questions concerning the meaning and intention of any of its terms or its validity shall be determined in accordance with the laws of the State of Utah.
- K. Integration.** All agreements heretofore made in the negotiation and preparation of this Agreement between the parties hereto are superseded by and merged into this Agreement, no statement or representation not embodied herein shall have any binding effect upon the parties hereto and there shall be no amendments hereto except those in writing signed by the parties hereto.
- L. Number and gender.** The singular shall be interpreted as the plural, and vice versa, if such treatment is necessary to interpret this Agreement in accord with the manifest intention of the parties hereto. Likewise, if either the feminine, masculine or neuter gender should be one of the other genders, it shall be so treated.
- M. Paragraph headings.** The paragraph and subparagraph headings used herein are for convenience only and shall not be considered in the interpretation of this Agreement.
- N. Partial validity.** If any portion of this Agreement shall be held invalid or inoperative, then insofar as is reasonable and possible:
1. The remainder of this agreement shall be considered valid and operative, and,
 2. Effect shall be given to the intent manifested by the portion held invalid or inoperative.

- O. Waiver.** The waiver by any party to this Agreement of a breach of any provision of this Agreement shall not be deemed to be a continuing waiver or a waiver of any subsequent breach, whether of the same or any other provision of this Agreement. Any waiver shall be in writing and signed by the waiving party.
- P. Ambiguities.** This agreement has been negotiated and drafted by all parties hereto and the general rule of contract construction that ‘ambiguities shall be construed against the draftsman’ shall have no application to this agreement.
- Q. No Third Party Beneficiaries.** This Agreement is not intended to be a third-party beneficiary contract for the benefit of any third parties, including but not limited to any customer of any party, and no such persons shall have any cause of action against any party for any breach or default by any party hereunder. In addition, no third parties shall have any rights hereunder that would, in any way, restrict the parties' right to modify or renew this Agreement at any time or in any manner.
- R. Counterparts.** This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.
- S. Rights and Remedies.** The parties shall have all rights and remedies provided under applicable federal or state law for a breach or threatened breach of this Agreement. These rights and remedies shall not be mutually exclusive, and the exercise of one or more of these rights and remedies shall not preclude the exercise of any other rights and remedies. Each party confirms that damages at law may be an inadequate remedy for a breach or threatened breach of any provision hereof and the respective rights and obligations of the parties hereunder shall be enforceable by specific performance, injunction, or other equitable remedy.

- T. Laws and Regulations.** Any and all services provided hereunder will comply fully with all applicable Federal and State and local laws and regulations.
- U. Indemnity Clause.** Each party agrees to indemnify, save harmless, and release the other party and all its officers, agents, volunteers, and employees from and against any and all loss, damages, injury liability, suits, and proceedings arising out of the performance of this Agreement which are caused in whole or in part by the negligence of the that party's officers, agents, volunteers, or employees, but not for claims arising from the other party's sole negligence.
- V. Assignment.** This Agreement may not be assigned by either party.
- W. Attorney's Fees and Costs.** In the event of a breach of any of the terms contained herein, the breaching party shall pay the non-breaching party reasonable attorney's fees and costs associated with enforcing the Agreement.
- X. Dispute Resolution.** The parties agree that any disputes regarding this Agreement shall first be submitted to non-binding mediation.
- Y. Employing Workers in Violation of 8 USC § 1324a Prohibited.** By signing this Agreement, the Contractor (a subcontractor of the Contractor, contract employee, staffing agency, trade union, or any contractor regardless of tier) certifies that it does not and will not, during the performance of this Agreement, knowingly employ, or subcontract with any entity which employs workers in violation of 8 USC § 1324a. Contractor agrees to produce, at the County's request, such documents which are required to verify compliance with applicable State and Federal laws. If Contractor knowingly employs workers in violation of 8 USC § 1324a, such violation shall be cause of unilateral cancellation of this Agreement. In the event this Agreement is terminated due to violation of 8 USC § 1324a by Contractors or subcontractors of Contractor, Contractor shall be liable for any and all costs associated with such termination, including, but not limited to, any damages incurred by the County as well as attorney fees.

Z. Entire Agreement. The parties agree that this Agreement constitutes their entire agreement and any changes or modifications must be agreed to in writing by both parties and approved by the County Legislative Body in a public meeting.

DATED this ____ day of May 2009.

Attest:

WASHINGTON COUNTY

KIM M. HAFEN
Washington County Clerk-Auditor

JAMES J. EARDLEY
Washington County Commission Chair

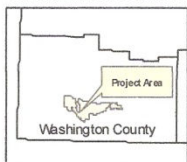
ROBERT SANDBERG,
Habitat Conservation Plan Administrator

DEL W. DESPAIN
Colorado Plateau Associates

EXHIBIT A-1



Base: Washington County NAIP (USDA 2006)



1:25,500
0 0.5 1 Miles

St. George City

Figure 2. Seeded Compensation Polygon Locations

Created: 7 December 2007
Edited: Version 1